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September 18, 2003

Via Facsimile (517) 373-6094
and First Class Mail

Honorable Edward Gaffney
Michigan House of Representatives
P.O. Box 30014
Lansing, Michigan 48933

RE: HB 5039

Dear Representative Gaffney:

I am writing on behalf of the Family Law Section of the State Bar of Michigan. The Section appreciates the opportunity to provide you with its position on HB 5039, which seeks to provide certain rights to grandparents.

In general, grandparents have no legal right to time with their children. Rather, their time is a derivative benefit; that is, they get to see their grandchildren on their children's time and with their children's consent. Clearly, then, grandparents face a dilemma when their own children are unable to provide the time or consent for grandparent visits, and under those circumstances, grandparenting time legislation may be appropriate.

However, one of the concerns with HB 5039, as written, is that the legislation establishes two sets of rules – one set for intact families and another set for families who were divorced or never married. The other major concern is that the legislation should not set up a mechanism which allows the court to substitute its own judgment for that of a fit parent. This second concern was the basis for the decision by the Michigan Supreme Court in Derosé v Derosé.

Therefore, in its discussions, the Family Law Section supported several changes to this bill. First, the Section proposes that "fit parent" be defined in the legislation and be defined pursuant to MCL 712a.2(b) of the Probate Code.

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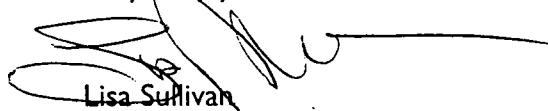
Second, legislation should limit standing to file a complaint for grandparenting time to situations in which the grandparent's child is deceased, is incarceration, has a medical or mental disability, is in the military service, is in foster care, or is otherwise unavailable as determined by the court. These situations would apply regardless of whether the family was intact. Further, even if the grandparent's child is unavailable for one of the reasons articulated herein, grandparents would have no standing if their child is fit and both parents agree on whether the grandparents should have time with the grandchildren. (For example, if one parent is in the military but agrees with the other parent that the children should not have time with the grandparents, the grandparents would have no standing under the statute.)

Third, where the parents do not or cannot agree, because of one parent's unavailability, the grandparents may file a complaint for time with the grandchildren. However, when making a determination about the complaint, the court would be required to find in favor of a fit parent's decision unless the grandparents, as the moving party, prove by clear and convincing evidence that the parent's decision would result in substantial harm to the child/ren.

The proposals discussed herein are similar to the statutes in other states that have been upheld. Therefore, Family Law Section asserts that these provisions would pass constitutional muster and would result in a grandparenting time statute consistent with the opinions of the U.S. and Michigan Supreme Courts, and it would support the legislation.

If you have any questions or comments about these proposals, please do not hesitate to contact me at 482-0222 or Bill Kandler at 485-4044.

Very truly yours,



Lisa Sullivan

Corresponding Secretary for the Family
Law Section of the State Bar of Michigan

cc: Jennifer Zambiasi (via facsimile: 373-0550)
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Janet Welch
William Kandler